

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATHANIEL SHAFER

Petitioner,

vs.

THE STATE OF WASHINGTON,

Respondent.

NO. 2:14-cv-00219-JPH

REPORT AND RECOMMENDATION TO
DISMISS HABEAS PETITION

By Order filed July 21, 2014, ECF No. 3, the Court advised Petitioner of the deficiencies of his federal habeas petition and directed him to amend within sixty (60) days. Petitioner, a prisoner at the Airway Heights Corrections Center, is proceeding *pro se* and has paid the \$5.00 filing fee; Respondent has not been served.

Petitioner was instructed to present facts showing that his federal petition is timely, and that each of his grounds for relief shows a violation of clearly established federal law and was properly exhausted in the State appellate courts. Although granted the opportunity to do so, Mr. Shafer did not amend his petition to cure these deficiencies. Furthermore, he did not name the state officer having custody of him as the respondent to this petition, *see* Rule 2(a), Rules Governing Section 2254 Cases in the United States District Courts; *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994), which deprives this Court of personal jurisdiction over this action.

For the reasons set forth above and in the Order to Amend Habeas Petition, ECF No. 3, **IT IS RECOMMENDED** that Mr. Shafer's petition for writ of habeas corpus,

1 ECF No. 1, be **DISMISSED with prejudice** as untimely under 28 U.S.C. § 2244(d), and
2 for lack of jurisdiction.

3 **OBJECTIONS**

4 Any party may object to a magistrate judge's proposed findings, recommendations
5 or report within fourteen (14) days following service with a copy thereof. Such party
6 shall file written objections with the Clerk of the Court and serve objections on all
7 parties, specifically identifying the portions to which objection is being made, and the
8 basis therefor. Any response to the objection shall be filed within fourteen (14) days after
9 receipt of the objection. Attention is directed to FED. R. CIV. P. 6(e), which adds
10 additional time after certain kinds of service.

11 A district judge will make a de novo determination of those portions to which
12 objection is made and may accept, reject, or modify the magistrate judge's determination.
13 The judge need not conduct a new hearing or hear arguments and may consider the
14 magistrate judge's record and make an independent determination thereon. The judge
15 may, but is not required to, accept or consider additional evidence, or may recommit the
16 matter to the magistrate judge with instructions. *United States v. Howell*, 231 F.3d 615,
17 621 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C), FED. R. CIV. P. 72; LMR 4, Local
18 Rules for the Eastern District of Washington.

19 A magistrate judge's recommendation cannot be appealed to a court of appeals;
20 only the district judge's order or judgment can be appealed.

21 **IT IS SO RECOMMENDED.** The District Court Executive is directed to enter
22 this Report and Recommendation, forward a copy to Petitioner, and SET A CASE
23 MANAGEMENT DEADLINE ACCORDINGLY.

24 **DATED** this 24th day of September, 2014.

25
26 S/ James P. Hutton
27 JAMES P. HUTTON
28 UNITED STATES MAGISTRATE JUDGE